



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 9, 1992

Mr. Barry D. Moore
Attorney at Law
245 South Seguin Avenue
New Braunfels, Texas 78130-5118

OR92-690

Dear Mr. Moore:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17675.

The City of New Braunfels (the "city"), which you represent, has received a request for certain telephone billing statements. Specifically, the requestor seeks "the long distance phone records and the mobile telephone records of New Braunfels Police Chief Dick Headen . . . for the period January 1, 1992 to present." In clarification of his request, the requestor adds: "I would request that [the] home numbers of officers that may appear on the records in question be marked out along with those numbers called relating to any criminal investigation on the copies of the records I am requesting." You advise us that some of the requested information has been made available to the requestor, including billing statement cover sheets showing the amount of money that is due and information to the extent that it does not include "information which the Chief of Police believed related to criminal investigations or contacts with informants, to the best of his recollection." You claim, however, that the remainder of the information is excepted from required public disclosure by sections 3(a)(1) and 3(a)(8) of the Open Records Act.

You seek to withhold some of the requested information under the doctrine of common-law privacy. Information may be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 3(a)(1) of the act by the Texas Supreme Court in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under the *Industrial Foundation* case, information may be withheld on common law privacy grounds only if it is both highly intimate or embarrassing *and* is of no legitimate concern to the public.

We have examined the information submitted to us for review. On its face, it contains no information that is "intimate or embarrassing." Moreover, you have not demonstrated how or why the information is "intimate or embarrassing." Accordingly, we have no basis for concluding that the requested information must be withheld from required public disclosure under section 3(a)(1) of the Open Records Act.

You also claim that some of the requested information is excepted from required public disclosure by section 3(a)(8) of the Open Records Act, which excepts

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

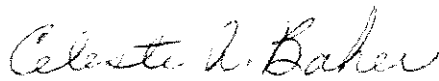
This office has stated in previous open records decisions that the test for determining whether records are excepted from public disclosure under section 3(a)(8) is whether release of the records would unduly interfere with law enforcement and crime prevention. Open Records Decisions Nos. 553 (1990) at 4; 474 (1987) at 5; *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977) (citing *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976)). When the "law enforcement" exception is claimed as a basis for excluding information from public view, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release of the requested information would unduly interfere with law enforcement. A case-by-case determination is necessary. Open Records Decision No. 434 (1986) at 2-3.

Although you advise us that some of the requested information relates to law enforcement investigations and contacts with informants, absent explanations particular to the law enforcement investigations implicated by the request, we have no basis for concluding categorically that release of the information would undermine a legitimate interest of law enforcement. The information submitted to us for review does not supply an explanation on its face. Moreover, you have not indicated that any of the requested information relates to an active criminal investigation by a law-enforcement agency. Accordingly, unless you provide this

office within ten days of receipt of this letter with an explanation as to why legitimate interests of law enforcement would be undermined by releasing the requested information, that information may not be withheld from required public disclosure under section 3(a)(8) of the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-690.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/GCK/lmm

Ref.: ID# 17675
ID# 17685

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